

## Department of Veterans Affairs

## § 1.966

(e) *Application*. A request for waiver of an indebtedness under this section shall be made within one year after the date on which the debtor receives, by Certified Mail-Return Receipt Requested, written notice from VA of the indebtedness. If written notice of indebtedness is sent by means other than Certified Mail-Return Receipt Requested, then there is no time limit for filing a request for waiver of indebtedness under this section.

(Authority: 38 U.S.C. 5302(b))

(f) *Exclusion*. Except as otherwise provided in this section, the indebtedness of a nonveteran obligor under the loan program is excluded from waiver.

(Authority: 38 U.S.C. 5302 (b) and (c))

[39 FR 26400, July 19, 1974, as amended at 44 FR 59907, Oct. 17, 1979; 57 FR 33875, July 31, 1992; 58 FR 3840, Jan. 12, 1993]

### § 1.965 Application of standard.

(a) The standard “Equity and Good Conscience”, will be applied when the facts and circumstances in a particular case indicate a need for reasonableness and moderation in the exercise of the Government’s rights. The decision reached should not be unduly favorable or adverse to either side. The phrase *equity and good conscience* means arriving at a fair decision between the obligor and the Government. In making this determination, consideration will be given to the following elements, which are not intended to be all inclusive:

(1) *Fault of debtor*. Where actions of the debtor contribute to creation of the debt.

(2) *Balancing of faults*. Weighing fault of debtor against Department of Veterans Affairs fault.

(3) *Undue hardship*. Whether collection would deprive debtor or family of basic necessities.

(4) *Defeat the purpose*. Whether withholding of benefits or recovery would nullify the objective for which benefits were intended.

(5) *Unjust enrichment*. Failure to make restitution would result in unfair gain to the debtor.

(6) *Changing position to one’s detriment*. Reliance on Department of Veterans Affairs benefits results in relin-

quishment of a valuable right or inurrence of a legal obligation.

(b) In applying this single standard for all areas of indebtedness, the following elements will be considered, any indication of which, if found, will preclude the granting of waiver:

(1) Fraud or misrepresentation of a material fact (see § 1.962(b)).

(2) *Bad faith*. This term generally describes unfair or deceptive dealing by one who seeks to gain thereby at another’s expense. Thus, a debtor’s conduct in connection with a debt arising from participation in a VA benefits/services program exhibits bad faith if such conduct, although not undertaken with actual fraudulent intent, is undertaken with intent to seek an unfair advantage, with knowledge of the likely consequences, and results in a loss to the government.

(Authority: 38 U.S.C. 5302(c))

[39 FR 26400, July 19, 1974, as amended at 58 FR 3841, Jan. 12, 1993; 58 FR 7296, Feb. 5, 1993; 69 FR 62202, Oct. 25, 2004]

### § 1.966 Scope of waiver decisions.

(a) Decisions will be based on the evidence of record. A hearing may be held at the request of the claimant or his/her representative. No expenses incurred by a claimant, his representative, or any witness incident to a hearing will be paid by the Department of Veterans Affairs.

(b) A regional office Committee may:

(1) Waive recovery as to certain persons and decline to waive as to other persons whose claims are based on the same veteran’s service.

(2) Waive or decline to waive recovery from specific benefits or sources, except that:

(i) There shall be no waiver of recovery out of insurance of an indebtedness secured thereby; *i.e.*, an insurance overpayment to an insured. However, recovery may be waived of any or all of such indebtedness out of benefits other than insurance then or thereafter payable to the insured.

(Authority: 38 U.S.C. 501, 5302)

[39 FR 26400, July 19, 1974, as amended at 44 FR 59907, Oct. 17, 1979; 48 FR 1056, Jan. 10, 1983; 69 FR 62202, Oct. 25, 2004]